

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Establishment of a Class A
Television Service

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MM Docket No. 00-10 ✓
MM Docket No. 99-292

REPLY COMMENTS OF K LICENSEE INC.

K Licensee Inc. ("K Licensee"), the licensee of low-power television station WEBR(LP), Manhattan, New York, by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby replies to the Comments filed by other parties in response to the Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding.¹ K Licensee limits the scope of this reply to only the Comments addressing the two critical implementation issues of importance WEBR(LP), namely the interpretation of

¹ Establishment of a Class A Television Service, *Order and Notice of Proposed Rulemaking* in MM Docket No. 00-10 (rel. January 13, 2000).

“interference” in Sections 5008(f)(7)(B)² and 5008(f)(7)(C)(ii)³ of the Community Broadcasters Protection Act (“CBPA”).⁴

**I. ONLY “OBJECTIONABLE” LPTV-TO-LPTV INTERFERENCE
SHOULD BE COUNTED IN SECTION 5008(f)(7)(B) DETERMINATIONS**

Other than K Licensee, it appears that only three commenters addressed the meaning of “interference” for purposes of Section 5008(f)(7)(B) determinations. Those commenters all advocated positions in general agreement with K Licensee’s proposed interpretation of “interference” -- counting only “objectionable” interference in such determinations. Each of those commenters, the Community Broadcasters Association (“CBA”), Communications Technologies, Inc. (“CTI”), and Equity Broadcasting Corporation (“Equity”), advanced well-reasoned interpretations of Section 5008(f)(7)(B), although they differed somewhat in how they

² Section 5008(f)(7)(B) prohibits the Commission from granting or modifying a Class A license absent a showing that the Class A station would not cause:

interference within the protected contour of any licensed LPTV or TV translator station or one authorized by construction permit or one with a pending displacement application submitted before the filing date of a Class A application or modification.

³ Section 5008(f)(7)(C)(ii) states that the Commission may not grant a Class A license, nor approve a modification of a Class A license, unless the applicant or licensee shows that the Class A station for which the license or modification is sought will not cause “interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission’s regulations (47 C.F.R. 22.625(b)(1) and 90.303) for frequencies in . . . the 482-488 megahertz band in New York.”

⁴ Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999) (to be codified at 47 U.S.C. § 336).

labeled “objectionable” interference.⁵ Moreover, none of the remaining commenters proposed alternative or conflicting interpretations of Section 5008(f)(7)(B) “interference.”

K Licensee shares the concern of CTI that if the Commission were to include “licensed” interference in its determinations under Section 5008(f)(7)(B), potentially it would exclude a significant number of the LPTV stations in the top ten markets from Class A status. K Licensee’s reading of the study conducted by CTI examining LPTV stations in the top ten Nielsen markets (“CTI Study”) reveals that up to one third of LPTV stations studied are currently operating at locations licensed by the Commission that result in non-objectionable (“licensed”) interference. In the New York and Dallas-Fort Worth markets, eighty percent and sixty percent of licensed LPTV stations, respectively, cause licensed interference to other LPTV stations. Because a finding of Section 5008(f)(7)(B) interference can be fatal to an applicant for a Class A license, only a single LPTV licensee in New York and two LPTV licensees in Dallas-Fort Worth could receive Class A primary status if licensed interference were to count against applicants in Section 5008(f)(7)(B) determinations. K Licensee agrees with CTI that many of these licensed interference cases have occurred only recently -- caused by DTV displacement -- and

⁵ For example, CBA’s Comments and Equity’s Comments both state that “disqualifying ‘interference’ should not be deemed to exist in any situation where an existing station is now operating without any interference complaints or where an LPTV station has accepted received interference.” Comments of the Community Broadcasters Association at 7; Comments of Equity Broadcasting Corporation at 5. Also, CTI asks the Commission to interpret Section 5008(f)(7)(B) of CBPA so that a “Class A station will not be considered to cause interference to another LPTV or TV translator station if that station voluntarily accepted interference from the Class A station.” Comments of Communications Technologies, Inc. at 3.

this trend is likely to continue as more DTV stations go on the air and LPTV applicants are forced to change channels.⁶

Congress intended Class A eligibility to be primarily based on CPBA's explicit inclusionary criteria such as the content of a station's programming (*i.e.*, 18 hours of programming per day and three hours of locally-originated programming per week).⁷ Nowhere in the legislative history of CPBA is there any evidence of a Congressional intent to exclude the vast number of LPTV stations with licensed interference from Class A protection. To avoid such an absurd result, and to ensure that a significant number of Class A-eligible LPTV stations are not arbitrarily excluded from Class A interference protection, the Commission should define "interference" to mean only objectionable interference for purposes of implementing new Section 5008(f)(7)(B).

II. THE COMMISSION SHOULD ADOPT ITS PROPOSED INTERPRETATION OF SECTION 5008(f)(7)(C)(ii)

Not a single commenter opposes the Commission's proposed interpretation of Section 5008(f)(7)(C)(ii). The City of New York Police Department ("NYPD") commented on this Section, by letter, expressing general concerns about interference from LPTV stations in New

⁶ *Id.* at 4. As K Licensee observed in its initial Comments, these recently-located stations may very well qualify for Class A status. It would be patently contrary to Congressional intent, however, to allow the mere existence of these stations, stations that have agreed to receive interference, to prevent a station that has served its viewers over a period of years from obtaining Class A status. *See* Comments of K Licensee at 7 & n.14.

⁷ H.R. CONF. REP. NO. 106-464, at 151 (1999).

York City on Channel 16.⁸ For the following reasons, these concerns do not require a change in the proposed interpretation of Section 5008(f)(7)(C)(ii). First, the Commission's proposed interpretation addresses NYPD's concerns. Interference to public safety on Channel 16 from any source other than WEBR(LP) would be disqualifying interference under the Commission's proposed interpretation.⁹ Second, as the attached correspondence from K Licensee to NYPD indicates, WEBR(LP) has not caused any interference to public safety land mobile systems to date.¹⁰ Indeed, WEBR(LP) sees its relationship with the New York public safety community as cooperative and non-adversarial in nature.

It is clear from the Senate Colloquy that Congress intended that WEBR(LP) not "be precluded from the Class A license due to Section 5008(f)(7)(C)(ii)."¹¹ It is also clear that WEBR(LP) and land mobile users of Channel 16 have coexisted without harmful interference and that the parties will continue to work together in the spirit of cooperation. Therefore, the Commission should adopt its proposed interpretation excepting station WEBR(LP) "from the require-

⁸ NYPD's Comments stated: "NYPD takes no position, at this time, with regard to whether WEBR-LP is eligible for a Class A license." Comments of The Police Department of the City of New York and the New York Metropolitan Advisory Committee at 2.

⁹ If NYPD believes the current interference requirements applicable to WEBR(LP) are insufficient, then NYPD must pursue that matter separately; it is beyond the scope of this rulemaking proceeding.

¹⁰ Letter from Mr. Young Dae Kwon to Mr. Vincent M. Mansfield, Deputy Chief, Commanding Officer, Office of Technology and Systems Development, New York City Police Department (dated February 21, 2000) (attached hereto as Exhibit A); *see also Notice* ¶ 40 (stating that the Commission "has no records of complaints of interference from Channel 17 to land mobile operations.").

¹¹ CONG. REC. S14989 (November 19, 1999) (statement of Senator Hatch).

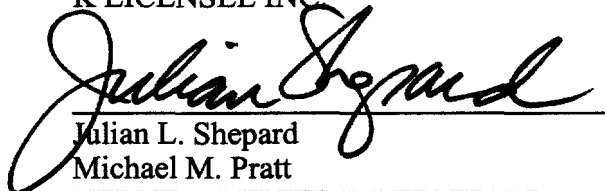
ment to show interference protection to use of Channel 16 in the New York City metropolitan area.”¹²

III. CONCLUSION

For the reasons set forth above and in K Licensee’s Comments, K Licensee respectfully requests that the Commission interpret CBPA Section 5008(f)(7)(B) to include only “objectionable” interference, and that the Commission adopt its proposed interpretation of Section 5008(f)(7)(C)(ii).

Respectfully submitted,

K LICENSEE INC

A handwritten signature in black ink, appearing to read "Julian L. Shepard", is written over a horizontal line.

Julian L. Shepard
Michael M. Pratt

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McPHERSON & HAND, CHARTERED
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(202) 371-6000
Its Attorneys

February 22, 2000

¹² Notice ¶ 40.

EXHIBIT A



K COMMUNICATIONS

136-56 39TH AVENUE LL FLUSHING NY 11354 TELEPHONE 718.358.4219 FACSIMILE 718.460.2379

February 21, 2000

Mr. Vincent M. Mansfield
Deputy Chief
Commanding Officer
Office of Technology
and Systems Development
New York Police Department
1 Police Plaza
New York, NY 10038

Dear Mr. Mansfield:

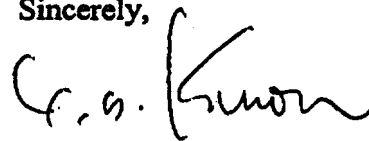
We received a copy of your letter dated February 9, 2000, submitted to the Federal Communications Commission ("FCC") in response to the *Notice of Proposed Rule Making* in Mass Media Docket Nos. 00-10 and 99-292, the proceeding implementing the Community Broadcasters Protection Act of 1999. We are the licensee of low power television ("LPTV") station WEBR(LP), Channel 17, Manhattan, New York, the station to which your letter refers. We hereby respond directly to your concerns about any potential future interference to the New York City Police Department ("NYPD") public safety radio system operating on frequencies in the 482-488 MHz band (TV Channel 16).

By way of background, WEBR(LP) is the only free, universally-available, Korean-language over-the-air television station serving New York City. WEBR(LP) provides 24 hour per day service, seven days per week, including a substantial amount of locally-produced news and public service programming. WEBR(LP)'s parent company, locally based in Flushing, New York, is strongly committed to serving, and continuing to serve, the New York City community. We have programmed WEBR(LP) since the station commenced operations in 1995, and we acquired ownership and control of the station in 1999. We have made an enormous investment in our local community, and in our station, neither of which would be meaningful without the public safety which your agency is devoted to maintaining. Likewise, the long-term viability of our investment in our local community and in WEBR(LP) is completely dependent on attaining the interference protections of the new Class A LPTV license.

During the five years we have been involved in the operation of WEBR(LP) (previously W17BM), we have not received a single complaint of interference from NYPD, or any of the New York City metropolitan area public safety agencies represented in the New York Metropolitan Area Advisory Committee ("NYMAC"). Moreover, to our knowledge *no* interference complaints involving WEBR(LP) have ever been filed at the FCC.

In the mutual interests of public safety and service to the Korean-American community of New York City, I ask that you contact me directly in the event that NYPD or any of the other NYMAC agencies has a complaint of interference to public safety radio service involving WEBR(LP). Our efforts to obtain Class A interference protection for WEBR(LP) will not interfere with any public safety communications systems. We have not caused any interference to date, and we do not wish to cause any interference in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Y. D. Kwon', written in a cursive style.

Young Dae Kwon
President

cc: Roy Stewart, Esquire
Keith Larson
Mary Fitzgerald, Esquire
Hossein Hashemzadeh
Julian L. Shepard, Esquire
Senator Daniel Moynihan
Senator Warren Hatch
Senator Chuck Schumer